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Legal aspects of electronic commerce

Explanatory note on the Convention on the Use of Electronic Communications in International Contracts

Note by the Secretariat

1. The Commission approved the final draft of the United Nations Convention on the Use of Electronic Communications in International Contracts ("the Convention") at its thirty-eighth session (Vienna, 4-15 July 2005). The Convention was subsequently adopted by the General Assembly and opened for signature on … .

2. When it approved the final draft for adoption by the General Assembly, at its thirty-eighth session, the Commission requested the Secretariat to prepare explanatory notes on the Convention and present them to the Commission at its thirty-ninth session (see A/60/17, para. 165).

3. Annex I to this note contains the general part of the explanatory notes prepared by the Secretariat pursuant to the Commission's request. The addenda to this note contain article-by-articles remarks on the Convention. The Commission may wish to take note of the explanatory notes and request their publication by the Secretariat, together with the final text of the Convention.

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I. Introduction

1. The United Nations Convention on the Use of Electronic Communications in International Contracts ("the Convention") was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by the United Nations General Assembly on ... .

2. When it approved the final draft for adoption by the General Assembly, at its thirty-eighth session (Vienna, 4-15 July 2005), UNCITRAL requested the Secretariat to prepare explanatory notes on the new instrument. UNCITRAL took note of the explanatory notes prepared by the Secretariat at its thirty-ninth session (New York, 19 June-7 July 2006), and requested the Secretariat to publish the notes together with the text of the Convention.

II. Main features of the Convention

3. The purpose of the Convention is to offer practical solutions for issues related to the use of electronic means of communication in connection with international contracts.

4. The Convention is not intended to establish uniform rules for substantive contractual issues that are not specifically related to the use of electronic communications. However, given that a strict separation between technology-related and substantive issues in the context of electronic commerce is not always feasible or desirable, the Convention contains a few substantive rules that extend beyond merely reaffirming the principle of functional equivalence where substantive rules are needed in order to ensure the effectiveness of electronic communications.

A. Sphere of application (articles 1 and 2)

5. The Convention applies to the "use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States". "Electronic communication" includes any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, made by electronic, magnetic, optical or similar means in connection with the formation or performance of a contract. The word "contract" in the Convention is used in a broad way and includes, for example, arbitration agreements and other legally binding agreements whether or not they are usually called "contracts".

6. The Convention applies to international contracts, that is, contracts between parties located in two different States, but it is not necessary that both those States be Contracting States of the Convention. However, the Convention only applies when the law of a Contracting State is the law applicable to the dealings between the parties, which is to be determined by the rules on private international law of the forum State, if the parties have not validly chosen the applicable law.

7. The Convention does not apply to electronic communications exchanged in connection with contracts entered into for personal, family or household purposes. However, unlike the corresponding exclusion under article 2 (a) of the

United Nations Sales Convention, the exclusion of these transactions under the Convention is an absolute one, meaning that the Convention would not apply to contracts entered into for personal, family or household purposes, even if the purpose of the contract was not apparent to the other party. Furthermore, the Convention does not apply to transactions in certain financial markets subject to specific regulation or industry standards. These transactions have been excluded because the financial service sector is already subject to well-defined regulatory controls and industry standards that address issues relating to electronic commerce in an effective way for the worldwide functioning of that sector. Lastly, the Convention does not apply to negotiable instruments or documents of title, in view of the particular difficulty of creating an electronic equivalent of paper-based negotiability, for which special rules would need to be devised.

B. Location of the parties and information requirements (articles 6 and 7)

8. The Convention contains a set of rules dealing with the location of the parties. The Convention does not contemplate a duty for the parties to disclose their places of business, but establishes a certain number of presumptions and default rules aimed at facilitating a determination of a party's location. It attributes primary—albeit not absolute—importance to a party's indication of its relevant place of business.

9. The Convention takes a cautious approach to peripheral information related to electronic messages, such as IP addresses, domain names or the geographic location of information systems, which despite their apparent objectivity have little, if any, conclusive value for determining the physical location of the parties.

C. Treatment of contracts (articles 8, 11,12 and 13)

10. The Convention affirms in article 8 the principle contained in article 11 of the UNCITRAL Model Law on Electronic Commerce that contracts should not be denied validity or enforceability solely because they result from the exchange of electronic communications. The Convention does not venture into determining when offers and acceptances of offers become effective for purposes of contract formation.

11. Article 12 of the Convention recognizes that contracts may be formed as a result of actions by automated message systems ("electronic agents"), even if no natural person reviewed each of the individual actions carried out by the systems or the resulting contract. However, article 11 clarifies that the mere fact that a party offers interactive applications for the placement of orders—whether or not its system is fully automated—does not create a presumption that the party intended to be bound by the orders placed through the system.

12. Consistently with the decision to avoid establishing a duality of regimes for electronic and paper-based transactions, and consistent with the facilitative—rather than regulatory—approach of the Convention, article 13 defers to domestic law on matters such as any obligations that the parties might have to make contractual terms available in a particular manner. However the Convention deals with the

substantive issue of input errors in electronic communications in view of the potentially higher risk of mistakes being made in real-time or nearly instantaneous transactions entered into by a natural person communicating with an automated message system. Draft article 14 provides that a party who makes an input error may withdraw the part of the communication in question under certain circumstances.

D. Form requirements (article 9)

13. Article 9 of the Convention reiterates the basic rules contained in articles 6, 7 and 8 of the UNCITRAL Model Law on Electronic Commerce concerning the criteria for establishing functional equivalence between electronic communications and paper documents—including "original" paper documents—as well as between electronic authentication methods and hand-written signatures. However, unlike the Model Law, the Convention does not deal with record retention, as it was felt that such a matter was more closely related to rules of evidence and administrative requirements than with contract formation and performance.

14. It should be noted that draft article 9 establishes minimum standards to meet form requirements that may exist under the applicable law. The principle of party autonomy in draft article 3, which is also contained in other UNCITRAL instruments, such as in article 6 of the United Nations Sales Convention, should not be understood as allowing the parties to go as far as relaxing statutory requirements on signature in favour of methods of authentication that provide a lesser degree of reliability than electronic signatures. Generally, it was said, party autonomy did not mean that the Convention empowers the parties to set aside statutory requirements on form or authentication of contracts and transactions

E. Time and place of dispatch and receipt of electronic communications (article 10)

15. As is the case under article 15 of the UNCITRAL Model Law on Electronic Commerce, the Convention contains a set of default rules on time and place of dispatch and receipt of data messages, which are intended to supplement national rules on dispatch and receipt by transposing them to an electronic environment. The differences in wording between article 10 of the Convention and article 15 of the Model Law are not intended to produce a different practical result, but rather are aimed at facilitating the operation of the Convention in various legal systems, by aligning the formulation of the relevant rules with general elements commonly used to define dispatch and receipt under domestic law.

16. Under the Convention, "dispatch" occurs when an electronic communication leaves an information system under the control of the originator, whereas 'receipt" occurs when an electronic communication becomes capable of being retrieved by the addressee, which is presumed to happen when the electronic communication reaches the addressee's electronic address. The Convention distinguishes between delivery of communications to specifically designated electronic addresses and delivery of communications to an address not specifically designated. In the first case, a communication is received when it reaches the addressee's electronic

address (or "enters" the addressee's "information system" in the terminology of the Model Law). For all cases where the communication is not delivered to a designated electronic address, receipt under the Convention only occurs when (a) the electronic communication becomes capable of being retrieved by the addressee (by reaching an electronic address of the addressee) and (b) the addressee actually becomes aware that the communication was sent to that particular address.

17. Electronic communications are presumed to be dispatched and received at the parties' places of business.

F. Relationship to other international instruments (article 19)

18. UNCITRAL hopes that States may find the Convention useful to facilitate the operation of other international instruments—particularly trade-related ones. Article 20 intends to offer a possible common solution for some of the legal obstacles to electronic commerce under existing international instruments, which had been the object of a study done by the Secretariat, in a manner that obviates the need for amending individual international conventions.

19. In addition to those instruments that, for the avoidance of doubt, are listed in paragraph 1, the provisions of the Convention may also apply, pursuant to paragraph 2, to electronic communications exchanged in connection with contracts covered by other international conventions, treaties or agreements, unless such application has been excluded by a Contracting State. The possibility of excluding this expanded application of the Convention has been added to take into account possible concerns of States that may wish to ascertain first whether the Convention would be compatible with their existing international obligations.

20. Paragraphs 3 and 4 of article 20 offer further flexibility by allowing States to add specific conventions to the list of international instruments to which they would apply the provisions of the Convention—even if the State has submitted a general declaration under paragraph 2—or to exclude certain specific conventions identified in their declarations. It should be noted that declarations under paragraph 4 of the draft article would exclude the application of the Convention to the use of electronic communications in respect of all contracts to which another international convention applies.

III. Summary of preparatory work

21. At its thirty-third session (New York, 17 June-7 July 2000), UNCITRAL held a preliminary exchange of views on proposals for future work in the field of electronic commerce. The three suggested topics were: electronic contracting, considered from the perspective of the United Nations Sales Convention on Contracts for the International Sale of Goods (the "United Nations Sales Convention");[1] online dispute settlement, and dematerialization of documents of title, in particular in the transport industry.

[1] United Nations, *Treaty Series*, vol. 1489, No. 25567.

22. The Commission welcomed those suggestions. The Commission generally agreed that, upon completing the preparation of the Model Law on Electronic Signatures, the Working Group would be expected to examine, at its thirty-eighth session, some or all of the above-mentioned topics, as well as any additional topic, with a view to making more specific proposals for future work by the Commission at its thirty-fourth session, in 2001. It was agreed that work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of the above-mentioned topics.[2]

23. The Working Group considered those proposals at its thirty-eighth session (New York, 12-23 March 2001), on the basis of a set of notes dealing with a possible convention to remove obstacles to electronic commerce in existing international conventions (A/CN.9/WG.IV/WP.89); dematerialization of documents of title (A/CN.9/WG.IV/WP.90); and electronic contracting (A/CN.9/WG.IV/WP.91). The Working Group held an extensive discussion on issues related to electronic contracting (A/CN.9/484, paras. 94-127). The Working Group concluded its deliberations by recommending to the Commission that it should start work towards the preparation of an international instrument dealing with certain issues in electronic contracting on a priority basis. At the same time, the Working Group recommended that the Secretariat be entrusted with the preparation of the necessary studies concerning three other topics considered by the Working Group: (a) a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments; (b) a further study of the issues related to transfer of rights, in particular, rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security interests in such goods; and (c) a study discussing the UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules, to assess their appropriateness for meeting the specific needs of online arbitration (A/CN.9/484, para. 134).

24. At the thirty-fourth session of the Commission (Vienna, 25 June-13 July 2001), there was wide support for the recommendations made by the Working Group, which were found to constitute a sound basis for future work by the Commission. Views varied, however, as regards the relative priority to be assigned to the different topics. One line of thought was that a project aimed at removing obstacles to electronic commerce in existing instruments should have priority over the other topics, in particular over the preparation of a new international instrument dealing with electronic contracting. The prevailing view, however, was in favour of the order of priority that had been recommended by the Working Group. It was pointed out, in that connection, that the preparation of an international instrument dealing with issues of electronic contracting and the consideration of appropriate ways for removing obstacles to electronic commerce in existing uniform law conventions and trade agreements were not mutually exclusive. The Commission was reminded of the common understanding reached at its thirty-third session that work to be carried out by the Working Group could involve consideration of several

[2] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 384-388.

topics in parallel.[3] In order to give States sufficient time to hold internal consultations, the Commission accepted that suggestion and decided that the first meeting of the Working Group on issues of electronic contracting should take place in the first quarter of 2002.[4]

25. At its thirty-ninth session (New York, 11-15 March 2002), the Working Group considered a note by the Secretariat discussing selected issues on electronic contracting, which contained in its annex I an initial draft tentatively entitled "Preliminary Convention on [International] Contracts Concluded or Evidenced by Data Messages" (A/CN.9/WG.IV/WP.95). The Working Group further considered a note by the Secretariat transmitting comments that had been formulated by an ad hoc expert group established by the International Chamber of Commerce to examine the issues raised in document A/CN.9/WG.IV/WP.95 and the draft provisions set out in its annex I (A/CN.9/WG.IV/WP.96).

26. The Working Group considered first the form and scope of the preliminary Convention (see A/CN.9/509, paras. 18-40). The Working Group agreed to postpone discussion on exclusions from the Convention until it had had an opportunity to consider the provisions related to location of the parties and contract formation. In particular, the Working Group decided to proceed with its deliberations by first taking up articles 7 and 14, both of which dealt with issues related to the location of the parties (A/CN.9/509, paras. 41-65). After it had completed its initial review of those provisions, the Working Group proceeded to consider the provisions dealing with contract formation in articles 8-13 (A/CN.9/509, paras. 66-121). The Working Group concluded its deliberations on the Convention with a discussion of draft article 15 (A/CN.9/509, paras. 122-125). The Working Group agreed that it should consider articles 2 to 4, dealing with the sphere of application of the Convention, and articles 5 (Definitions) and 6 (Interpretation), at its fortieth session. The Working Group requested the Secretariat to prepare a revised version of the preliminary Convention, based on those deliberations and decisions, for consideration by the Working Group at its fortieth session.

27. Furthermore, at the closing of that session, the Working Group was informed of the progress that had been made by the Secretariat in connection with the survey of possible legal obstacles to electronic commerce in existing trade-related instruments. The Working Group noted that the Secretariat had begun the work by identifying and reviewing trade-relevant instruments from among the large number of multilateral treaties that were deposited with the Secretary-General. The Secretariat had identified 33 treaties as being potentially relevant for the survey and analysed possible issues that might arise from the use of electronic means of communications under those treaties. The preliminary conclusions reached by the Secretariat in relation to those treaties were set out in a note by the Secretariat (A/CN.9/WG.IV/WP.94). The Working Group took note of the progress that had been made by the Secretariat in connection with the survey, but did not have sufficient time to consider the preliminary conclusions of the survey. The Working Group requested the Secretariat to seek the views of member and observer States on the survey and the preliminary conclusions indicated therein and to prepare a report compiling such comments for consideration by the Working Group at a later stage.

[3] Ibid., *Fifty-sixth Session, Supplement No. 17* (A/56/17), para. 293.

[4] Ibid., para. 295.

The Working Group requested the Secretariat to seek the views of other international organizations, including organizations of the United Nations system and other intergovernmental organizations, as to whether there were international trade instruments in respect of which those organizations or their member States acted as depositaries that those organizations would wish to be included in the survey being conducted by the Secretariat (A/CN.9/509, para. 16).

28. The Commission considered the Working Group's report at its thirty-fifth session (New York, 17-28 June 2002). The Commission noted with appreciation that the Working Group had started its consideration of a possible international instrument dealing with selected issues on electronic contracting. The Commission reaffirmed its belief that an international instrument dealing with certain issues of electronic contracting might be a useful contribution to facilitate the use of modern means of communication in cross-border commercial transactions. The Commission commended the Working Group for the progress made in that regard. However, the Commission also took note of the varying views that had been expressed within the Working Group concerning the form and scope of the instrument, its underlying principles and some of its main features. The Commission noted, in particular, the proposal that the Working Group's considerations should not be limited to electronic contracts, but should apply to commercial contracts in general, irrespective of the means used in their negotiation. The Commission was of the view that member and observer States participating in the Working Group's deliberations should have ample time for consultations on those important issues. For that purpose, the Commission considered that it might be preferable for the Working Group to postpone its discussions on a possible international instrument dealing with selected issues on electronic contracting until its forty-first session, to be held in New York from 5 to 9 May 2003.[5]

29. As regards the Working Group's consideration of possible legal obstacles to electronic commerce that might result from trade-related international instruments, the Commission reiterated its support for the efforts of the Working Group and the Secretariat in that respect. The Commission requested the Working Group to devote most of its time at its fortieth session, in October 2002, to a substantive discussion of various issues that had been raised in the Secretariat's initial survey (A/CN.9/WG.IV/WP.94).[6]

30. At its fortieth session (Vienna, 14-18 October 2002), the Working Group reviewed the survey of possible legal barriers to electronic commerce contained in document A/CN.9/WG.IV/WP.94. The Working Group generally agreed with the analysis and endorsed the recommendations that had been made by the Secretariat (see A/CN.9/527, paras. 24-71). The Working Group agreed to recommend that the Secretariat take up the suggestions for expanding the scope of the survey so as to review possible obstacles to electronic commerce in additional instruments that had been proposed for inclusion in the survey by other organizations and explore with those organizations the modalities for carrying out the necessary studies, taking into account the possible constraints put on the Secretariat by its current workload. The Working Group invited member States to assist the Secretariat in that task by identifying appropriate experts or sources of information in respect of the various

[5] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 206.

[6] Ibid., para. 207.

specific fields of expertise covered by the relevant international instruments. The Working Group used the remaining time at that session to resume its deliberations on the preliminary Convention (see A/CN.9/527, paras. 72-126).

31. The Working Group resumed its deliberations on the preliminary Convention at its forty-first session (New York, 5-9 May 2003. The Working Group noted that a task force that had been established by the International Chamber of Commerce had submitted comments on the scope and purpose of the Convention (A/CN.9/WG.IV/WP.101, annex). The Working Group generally welcomed the work being undertaken by private-sector representatives, such as the International Chamber of Commerce, which was considered to complement usefully the work being undertaken in the Working Group to develop an international convention. The decisions and deliberations of the Working Group with respect to the Convention are reflected in chapter IV of the report on its forty-first session (see A/CN.9/528, paras. 26-151).

32. In accordance with a decision taken at its fortieth session (see A/CN.9/527, para. 93), the Working Group also held a preliminary discussion on the question of excluding intellectual property rights from the Convention (see A/CN.9/528, paras. 55-60). The Working Group agreed that the Secretariat should be requested to seek the specific advice of relevant international organizations, such as the World Intellectual Property Organization (WIPO) and the World Trade Organization, as to whether, in the view of those organizations, including contracts that involved the licensing of intellectual property rights in the scope of the Convention so as to expressly recognize the use of data messages in the context of those contracts might negatively interfere with rules on the protection of intellectual property rights. It was agreed that whether or not such exclusion was necessary would ultimately depend on the substantive scope of the Convention.

33. At its thirty-sixth session (Vienna, 30 June-11 July 2003), the Commission noted the progress made by the Secretariat in connection with a survey of possible legal barriers to the development of electronic commerce in international trade-related instruments. The Commission reiterated its belief in the importance of that project and its support for the efforts of the Working Group and the Secretariat in that respect. The Commission noted that the Working Group had recommended that the Secretariat expand the scope of the survey to review possible obstacles to electronic commerce in additional instruments that had been proposed to be included in the survey by other organizations and to explore with those organizations the modalities for carrying out the necessary studies, taking into account the possible constraints put on the Secretariat by its current workload. The Commission called on member States to assist the Secretariat in that task by inviting appropriate experts or sources of information in respect of the various specific fields of expertise covered by the relevant international instruments.[7]

34. The Commission further noted with appreciation that the Working Group had continued its consideration of a preliminary Convention dealing with selected issues related to electronic contracting. The Commission reaffirmed its belief that the instrument under consideration would be a useful contribution to facilitate the use of modern means of communication in cross-border commercial transactions. The Commission observed that the form of an international convention had been used by

[7] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 211.

the Working Group thus far as a working assumption, but that did not preclude the choice of another form for the instrument at a later stage of the Working Group's deliberations.[8]

35. The Commission was informed that the Working Group had exchanged views on the relationship between the preliminary Convention and the Working Group's efforts to remove possible legal obstacles to electronic commerce in existing international instruments relating to international trade (see A/CN.9/528, para. 25). The Commission expressed support for the Working Group's efforts to tackle both lines of work simultaneously.[9]

36. The Commission was informed that the Working Group had held a preliminary discussion on the question of whether intellectual property rights should be excluded from the Convention (see A/CN.9/528, paras. 55-60). The Commission noted the Working Group's understanding that its work should not be aimed at providing a substantive law framework for transactions involving "virtual goods", nor was it concerned with the question of whether and to what extent "virtual goods" were or should be covered by the United Nations Sales Convention. The question before the Working Group was whether and to what extent the solutions for electronic contracting being considered in the context of the preliminary Convention could also apply to transactions involving licensing of intellectual property rights and similar arrangements. The Secretariat was requested to seek the views of other international organizations on the question, in particular WIPO.[10]

37. At its forty-second session (Vienna, 17-21 November 2003), the Working Group began its deliberations by holding a general discussion on the scope of the preliminary Convention. The Working Group, inter alia, noted that a task force had been established by the International Chamber of Commerce to develop contractual rules and guidance on legal issues related to electronic commerce, tentatively called "e-Terms 2004". The Working Group welcomed the work being undertaken by the International Chamber of Commerce, which was considered to complement usefully the work being undertaken in the Working Group to develop an international convention. The Working Group was of the view that the two lines of work were not mutually exclusive, in particular since the Convention dealt with requirements that were typically found in legislation, and legal obstacles, being statutory in nature, could not be overcome by contractual provisions or non-binding standards. The Working Group expressed its appreciation to the International Chamber of Commerce for the interest in carrying out its work in cooperation with UNCITRAL and confirmed its readiness to provide comments on drafts that the International Chamber of Commerce would be preparing (see A/CN.9/546, paras. 33-38).

38. The Working Group proceeded to review articles 8 to 15 of the revised preliminary Convention contained in the annex to the note by the Secretariat (A/CN.9/WG.IV/WP.103). The Working Group agreed to make several amendments to those provisions and requested the Secretariat to prepare a revised draft for future consideration (see A/CN.9/546, paras. 39-135).

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[8] Ibid., para. 212.
[9] Ibid., para. 213.
[10] Ibid., para. 214.

39. The Working Group continued its work on the preliminary Convention at its forty-third session (New York, 15-19 March 2004) on the basis of a note by the Secretariat that contained a revised version of the preliminary Convention (A/CN.9/WG.IV/WP.108). The deliberations of the Working Group focused on draft articles X, Y and 1 to 4 (A/CN.9/548, paras. 13-123). The Working Group agreed that it should endeavour to complete its work on the Convention with a view to enabling its review and approval by the Commission in 2005.

40. At its thirty-seventh session (New York, 14-25 June 2004), the Commission took note of the reports of the Working Group on the work of its forty-second and forty-third sessions (A/CN.9/546 and A/CN.9/548, respectively). The Commission was informed that the Working Group had undertaken a review of articles 8 to 15 of the revised text of the preliminary Convention at its forty-second session. The Commission noted that the Working Group, at its forty-third session, had reviewed articles X and Y as well as articles 1 to 4 of the Convention and that the Working Group had held a general discussion on draft articles 5 to 7 bis. The Commission expressed its support for the efforts by the Working Group to incorporate in the Convention provisions aimed at removing possible legal obstacles to electronic commerce that might arise under existing international trade-related instruments. The Commission was informed that the Working Group had agreed that it should endeavour to complete its work on the Convention with a view to enabling its review and approval by the Commission in 2005. The Commission expressed its appreciation for the Working Group's endeavours and agreed that a timely completion of the Working Group's deliberations on the Convention should be treated as a matter of importance, which would justify approving a two-week forty-fourth session of the Working Group to be held in October 2004.[11]

41. The Working Group resumed its deliberations at its forty-fourth session (Vienna, 11-22 October 2004), on the basis of a newly revised preliminary Convention contained in annex I of the note by the Secretariat A/CN.9/WG.IV/WP.110. The Working Group reviewed and adopted draft articles 1 to 14, 18 and 19 of the Convention. The relevant decisions and deliberations of the Working Group are reflected in its report on the work of its forty-fourth session (A/CN.9/571, paras. 13-206). At that time, the Working Group also held an initial exchange of views on the preamble and the final clauses of the Convention, including proposals for additional provisions in chapter IV. In the light of its deliberations on chapters I, II and III and articles 18 and 19 of the Convention, the Working Group requested the Secretariat to make consequential changes in the draft final provisions in chapter IV. The Working Group also requested the Secretariat to insert within square brackets in the final draft to be submitted to the Commission the draft provisions that had been proposed for addition to the text considered by the Working Group (A/CN.9/WG.IV/WP.110). The Working Group requested the Secretariat to circulate the revised version of the Convention to Governments for their comments, with a view to consideration and adoption of the Convention by the Commission at its thirty-eighth session, in 2005.

42. A number of Governments and international organizations submitted written comments on the Convention (see A/CN.9/578 and addenda 1-17). UNCITRAL considered the Convention and the comments received at its thirty-eighth session

[11] Ibid., *Fifty-ninth Session, Supplement No. 17* (A/59/17), para. 71.

(Vienna, 4-15 July 2005). UNCITRAL agreed to make a few substantive amendments to the draft text and submitted it to the General Assembly for adoption. The deliberations of UNCITRAL are reflected in the report on the work of its thirty-eight session (A/60/17, paras. 12-167).

43. The General Assembly adopted the Convention on 23 November 2005 and opened it for signature from 16 January 2006 to 16 January 2008 by its resolution 60/21, which reads as follows:

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Considering that problems created by uncertainties as to the legal value of electronic communications exchanged in the context of international contracts constitute an obstacle to international trade,

Convinced that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts and may help States gain access to modern trade routes,

Recalling that, at its thirty-fourth session, in 2001, the Commission decided to prepare an international instrument dealing with issues of electronic contracting, which should also aim at removing obstacles to electronic commerce in existing uniform law conventions and trade agreements, and entrusted its Working Group IV (Electronic Commerce) with the preparation of a draft,[12]

Noting that the Working Group devoted six sessions, from 2002 to 2004, to the preparation of the draft Convention on the Use of Electronic Communications in International Contracts, and that the Commission considered the draft Convention at its thirty-eighth session in 2005,

Being aware that all States and interested international organizations were invited to participate in the preparation of the draft Convention at all the sessions of the Working Group and at the thirty-eighth session of the Commission, either as members or as observers, with a full opportunity to speak and make proposals,[13]

Noting with satisfaction that the text of the draft Convention was circulated for comments before the thirty-eighth session of the Commission to all Governments and international organizations invited to attend the meetings

[12] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paras. 291–295.

[13] Ibid., *Sixtieth Session, Supplement No. 17* (A/60/17), chap. III.

of the Commission and the Working Group as observers, and that the comments received were before the Commission at its thirty-eighth session,[14]

Taking note with satisfaction of the decision of the Commission at its thirty-eighth session to submit the draft Convention to the General Assembly for its consideration,[15]

Taking note of the draft Convention approved by the Commission,[16]

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for preparing the draft Convention on the Use of Electronic Communications in International Contracts;[5]

2. *Adopts* the United Nations Convention on the Use of Electronic Communications in International Contracts, which is contained in the annex to the present resolution, and requests the Secretary-General to open it for signature;

3. *Calls upon* all Governments to consider becoming party to the Convention.

53rd plenary meeting
23 November 2005

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[14] A/CN.9/578 and Add.1–17.

[15] *Official* Records *of the General Assembly, Sixtieth Session, Supplement No. 17* (A/60/17), para. 167.

[16] Ibid., annex I.